

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION et al.,

Plaintiffs,

v.

CHRISTOPHER J. CHRISTIE et al.,

Defendants.

Civil Action No. 3:12-cv-04947 (MAS) (LHG)

Honorable Michael A. Shipp, U.S.D.J.

**DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACTS PURSUANT TO
LOCAL RULE 56.1**

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Pursuant to Local Rule 56.1, defendants Christopher J. Christie, David L. Rebeck, and Frank Zanzuccki submit this Statement of Undisputed Material Facts in support of Defendants' cross-motion for summary judgment, as well as in support of Defendants' opposition to Plaintiffs' motion for summary judgment.

The Sports Wagering Market and Its Legal Framework

1. Federal criminal law prohibits transmission of information on a "wire communication facility" for the purpose of assisting the placement of bets and wagers, but makes an exception when the wagering is legal under State law. *See* 28 U.S.C. § 1804.
2. Federal anti-racketeering laws apply to businesses "involving gambling," but only when gambling is "in violation of the laws of the State in which [it is] committed." *Id.* § 1952.
3. Sports wagering was legalized in Nevada in 1949. Declaration of Peter Slocum ("Slocum Decl."), Exhibit 1 (Willig Report, ¶ 15).
4. Oregon began operating a lottery game based on NFL games in 1989, but discontinued the lottery in 2007. *Id.* (Willig Report, ¶ 20).
5. Montana allows sports pools, fantasy sports leagues, and sports tab games in which players wager against and settle with each other rather than wagering against and settling with the house. *Id.*
6. In 2009, Delaware began permitting wagering on NFL games through multi-game parlay cards. *Id.*
7. The amount of legal and illegal sports gambling in the United States has increased substantially from 1960 to the present. *Id.* (Willig Report, ¶¶ 15-18, 22); *see also id.* Exhibit 2 (Results from 2008 NCAA Study on Collegiate Wagering [Plaintiffs' 00003054] ("Gambling

expansion will continue in the U.S. and around the world.”); *id.* Exhibit 3 (Goodell Dep. 29:5-18 (an increase in the amount of money wagered on sports “wouldn’t surprise me”)).

8. The annual volume of legal sports wagering in Nevada has increased from approximately \$1.5 billion shortly before PASPA’s enactment, to \$2.9 billion in 2011. Slocum Decl. Exhibit 1 (Willig Report ¶ 17); *see also id.* Exhibit 2 (Results from 2008 NCAA Study on Collegiate Wagering [Plaintiffs’ 00003053] (stating that “Approximately \$2.57 billion was gambled in 2008 in Nevada’s legal sports book.”)).

9. In December 2009, Commissioner David Stern stated: “We have morphed considerably in our corporate view where we say, look, Las Vegas is not evil. Las Vegas is a vacation and destination resort, and they have sports gambling and, in fact, there’s a federal statute that gives them a monopoly of types. And we actually supported that statute back in ‘92.” Slocum Decl. Exhibit 4 (Ian Thomsen, Sports Illustrated: “Stern Open to Legalized Betting, Rule Changes” (Dec. 11, 2009) [Defendants’ 00022]); *see also id.* [REDACTED]

10. In December 2009, NBA Commissioner David Stern referred to nationally legalized gambling on the NBA as a “possibility” that “may be a huge opportunity.” Slocum Decl. Exhibit 4 (Ian Thomsen, Sports Illustrated: “Stern Open to Legalized Betting, Rule Changes” (Dec. 11, 2009) [Defendants’ 00022]); *see also id.* [REDACTED]

11. In December 2009, NBA Commissioner David Stern acknowledged that the NBA can no longer oppose gambling on moral grounds: “Considering the fact that so many state governments—probably between 40 and 50—don’t consider it immoral, I don’t think that anyone [else] should. It may be a little immoral, because it really is a tax on the poor, the lotteries. But

having said that, it's now a matter of national policy: Gambling is good." Slocum Decl. Exhibit 4 (Ian Thomsen, Sports Illustrated: "Stern Open to Legalized Betting, Rule Changes" (Dec. 11, 2009) [Defendants' 00022]); *see also id.* [REDACTED]

[REDACTED] Slocum Decl. [REDACTED]

13. [REDACTED]
[REDACTED]
Id. [REDACTED]

14. There are approximately forty direct flights each week from Newark, New Jersey to Las Vegas. Newark Liberty Airport Flight Schedules, available at:
http://timetables.oag.com/fe_tt/nyc/flights.asp

15. The total volume of sports wagering in the United States is estimated to be in the hundreds of billions of dollars annually, with the illegal sports wagering market having increased from an estimated \$50 billion in 1989 (adjusting for inflation) to an estimated range of \$270 to 500 billion today. Slocum Decl. Exhibit 1 (Willig Report ¶ 22); *id.* Exhibit 6 (Pedowitz Report to NBA Board of Governors, Oct. 1, 2008 [Plaintiffs' 00003465-66] ("[T]otal volume of sports betting in the United States is \$325 to \$400 billion")); *see also id.* Exhibit 7 (National Gambling Impact Study Commission Report, 1999 [Plaintiffs' 00002363] (1999 estimate of illegal sports betting in the U.S. ranged from \$80 billion to \$380 billion)); *id.* Exhibit 8 (Emmert Dep. 17:17-18:10 (illegal sports gambling industry is "very significant activity")); *id.* Exhibit 3 (Goodell Dep. 28:7-29:4 ("I think it's fair to say it's a billion dollars plus.")); *id.* [REDACTED]
[REDACTED] *id.* [REDACTED]

[REDACTED] *id.* [REDACTED]
[REDACTED].

16. Less than 1% of the estimated betting on sports that occurs annually in the United States consists of sports wagers placed legally in Nevada. Slocum Decl. Exhibit 1 (Willig Report ¶ 21); *id.* Exhibit 6 (Pedowitz Report to NBA Board of Governors, Oct. 1, 2008 [Plaintiffs' 00003466] ("less than 1% of this betting taking place legally in Nevada")); *id.* Exhibit 7 (National Gambling Impact Study Commission Report, 1999 [Plaintiffs' 00002363] (\$2.3 billion in legal sports wagering)); *see also id.* [REDACTED] *id.* [REDACTED]
[REDACTED]; *id.*
[REDACTED]
[REDACTED]

17. The American Gaming Association indicates that \$93.9 million was wagered legally in Nevada on the 2012 Super Bowl as compared to over \$6 billion wagered illegally. Slocum Decl. Exhibit 1 (Willig Report ¶ 24).

18. The FBI estimates that illegal wagering on March Madness totals \$2.5 billion every year, as compared to legal wagering on March Madness of about \$80-90 million. The March Madness tournament has grown in popularity; the value of TV rights sold by the NCAA have grown from an inflation adjusted \$35 million in the early 1980s to approximately \$770 million today. The NCAA has sanctioned the development of a March Madness Facebook application, promotes March Madness brackets on the NCAA website, and provides links to March Madness brackets that allow groups to set up and manage bracket games that may involve wagering. *Id.* (Willig Report ¶¶ 23, 37(c), 97-98).

19. Fantasy sports wagering, like real-world sports wagering, involves putting money at stake on actual game performances that are subject to chance, with a financial prize going to the winner (which is often the result of a pool formed by the league's participants at the beginning of the season). Slocum Decl. Exhibit 1 (Willig Report ¶¶ 84, 89-93) (describing similarities between fantasy sports and sports wagering; describing official NBA Fantasy "Pro Leagues" that involve entry fees, allow participants to compete against unknown competitors, and offer financial payouts; describing NFL fantasy offerings including games offering \$1 million prizes and another game that offers a trip to the Pro Bowl for correctly picking the score of a single game; and describing MLB fantasy games including the "Beat the Streak" game that offers \$5.6 million prize for correctly predicting hits); *id.* [REDACTED] (some fantasy leagues have entry fees and monetary prizes and players may select high entry fees with larger payouts); [REDACTED] Slocum Decl. [REDACTED] [REDACTED]; *id.* [REDACTED] *id.* Exhibit 13 (NCAA 30(b)(6) Dep. 25:15-25, 169:11-20, 170:16-171:9 (NCAA prohibits participation in fantasy sports leagues and March Madness pools with entry fees and prizes to the winner as impermissible sports wagering)); *id.* [REDACTED] [REDACTED] *id.* [REDACTED] [REDACTED] [REDACTED] *id.* Exhibit 16 (NFL 30(b)(6) Dep. 29:21-31:4 (wagering

money on a player's statistics over the course of an entire season (which occurs in fantasy games) meets the NFL's definition of sports gambling); *id.* at 155:23-156:19 (admitting that fantasy football outcomes are uncertain)); *id.* [REDACTED]; *id.* Exhibit 17 (Fantasy Industry Trends, Fantasy Sports Trade Association [Plaintiffs' 00003548] (20% of fantasy sports participants report that one of their motivations to play fantasy sports is to win money)); *id.* Exhibit 18 (Yahoo.com Fantasy Hockey Rules [Plaintiffs' 00004064] (providing for entry fees of \$20 to \$100 and opportunity to win \$600)); *id.* [REDACTED].

20. [REDACTED]

[REDACTED] Slocum Decl. [REDACTED].

21. [REDACTED]

[REDACTED] Slocum Decl. [REDACTED].

22. The fantasy sports market is now estimated to be a \$5 billion per year industry. Slocum Decl. Exhibit 1 (Willig Report n.92).

The Leagues' Interactions With Sports Wagering

23. From 1960 to the present, the NCAA has seen growth in the number of Division I basketball teams, the number of football bowl games, basketball media rights revenue, and football bowl game payouts. Slocum Decl. Exhibit 1 (Willig Report, ¶ 37, Exhibits III-B-1, III-B-2, III-B-3, III-B-4).

24. From 1960 to the present, the professional sports leagues (Plaintiffs MLB, NBA, NFL, and NHL) have seen growth in the number of teams, aggregate team value, attendance, total revenue, and broadcast revenue. Slocum Decl. Exhibit 1 (Willig Report, ¶¶ 34-35, Exhibits III-A-1, III-A-2, III-A-3, III-A-4, III-A-5); *id.* [REDACTED]

[REDACTED]; *id.* [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Slocum Decl. Exhibit 16 (NFL 30(b)(6) Dep. 90:24-91:9 (“We’ve been profitable. We’ve done better each year [despite legal sports gambling in Las Vegas].”); *id.* at 61:3-15 (NFL has “grown from the fifth most popular sport to a \$10 billion-a-year industry . . . what [we] are doing seems to be working.”)); Slocum Decl. [REDACTED]

[REDACTED]

[REDACTED]; *id.* [REDACTED]

[REDACTED]

[REDACTED]

25. The professional sports leagues support and encourage their fans to participate in fantasy sports, which often involve a prize to the winner, because fantasy sports: (a) engage younger fans, (b) increase fan avidity, viewership, and consumption of league products, and (c) generate revenue for the leagues. Slocum Decl. Exhibit 1 (Willig Report ¶¶ 85-94 (citing several empirical investigations concluding that participation in fantasy sports predicts many types of sports consumption, including higher levels of game attendance, greater consumption of televised sport, and increased consumption via the Internet)); *id.* Exhibit 20 (NFL.com Fantasy Football Official Rules [Plaintiffs’00003147] (offering grand prize worth \$16,600)); *id.* Exhibit

21 (NFL.com “Rush Fantasy Official Rules” [Plaintiffs’ 00003179] (fantasy football game for children under the age of fifteen with a grand prize of a “scholarship” check for \$10,000)); *id.*

[REDACTED]

[REDACTED] Slocum Decl. [REDACTED]

[REDACTED]

[REDACTED]; Slocum Decl. Exhibit 16 (NFL 30(b)(6) Dep. 157:2-8; 215:4-25; 228:18-229:2; 246:13-19 (NFL sponsors fantasy football games, including “Custom Leagues” options that allows fantasy football players to calculate and track fees associated with his or her league, that allows participants to win trips, game tickets, and “scholarship” checks, including a fantasy football game for children under the age of fifteen that offers a “scholarship” check for \$10,000));

[REDACTED]

[REDACTED] *id.* at 161:3-

10 (Participation in fantasy sports enhances the fan experience and increases the loyalty of fans,

which in turn provides a financial benefit to the NFL)); Slocum Decl. Exhibit 24 (MLB.com 2012 Fantasy Baseball Official Rules [Plaintiffs' 00004071-82] (offering \$10,000 prize)); *id.* Exhibit 25 (MLB.com Million Dollar Pick'Em Official Rules [Plaintiffs' 00002211-13] (offering \$1,000,000.00 for predicting specific outcomes of MLB games)); *id.* Exhibit 26 (MLB.com Odyssey Official Rules [Plaintiffs' 00002214-18] (offering prize for predicting game outcomes)); *id.*

[REDACTED]
[REDACTED]; *id.* [REDACTED]
[REDACTED]; *id.* Exhibit 27
(Yahoo Sports (in partnership with NBA.com) Official Fantasy Basketball Rules [Plaintiffs' 00004037-63] at Plaintiffs' 00004039 (offering pro leagues with entry fees between \$20 and \$100)); *id.* [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]; *id.* [REDACTED]
[REDACTED]
[REDACTED] *id.* Exhibit 28 (NHL.com Official Fantasy Hockey
Rules [Plaintiffs' 00004066] (official NHL fantasy hockey game)); *id.* [REDACTED]

[REDACTED]; *id.* [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

26. Plaintiffs have strict rules and by-laws prohibiting match fixing and point shaving, and penalties include fines, suspensions, expulsions, and/or permanent disqualification or ineligibility. Slocum Decl. [REDACTED]
id. Exhibit 31 (MLB Rule 21 (Plaintiffs' 00001798)); *id.* [REDACTED]
[REDACTED] *id.* Exhibit 33 (NCAA Bylaw, Article 10: Ethical Conduct; NCAA Employee Handbook (Plaintiffs' 00003708-10)).

27. The Leagues educate players, officials, and staff on anti-gambling policies and rules. Slocum Decl. Exhibit 3 (Goodell Dep. 9:3-12 (staff meets with players, staff, and referees on an annual basis to make sure they understand and abide by anti-gambling policies)); Slocum Decl. Exhibit 34 (Plaintiffs' 00001838-39 (NBA anti-gambling education pamphlet)); *id.* [REDACTED]
[REDACTED]
[REDACTED].

28. The Leagues' strict anti-gambling policies have been successful in preventing game fixing. Slocum Decl. Exhibit 8 (Emmert Dep. 82:21-83:6 (NCAA believes its anti-gambling regulations are effective)); *id.* Exhibit 3 (Goodell Dep. 29:19-30:4 (NFL's "very strict rules" which are enforced "very strictly" have protected the integrity of its games notwithstanding increase in legal and illegal sports wagering); *id.* at 26:4-11 (NFL's antigambling policies are "the most important" factor in the NFL's successful prevention of game fixing)); Slocum Decl. Exhibit 16 (NFL 30(b)(6) Dep. 61:7-15 (NFL is \$10 billion-a-year industry, so "what we are doing seems to be working")); *id.* [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]; *see also* Slocum Decl.

Exhibit 13 (NCAA 30(b)(6) Dep. 198:20-199:2 (The results of a 2008 NCAA study on student-athlete sports wagering showed that education efforts by the NCAA “can be effective” in reducing the levels of student-athlete sports wagering)).

29. The NBA has developed statistical screening methods that “detect data patterns that may suggest misconduct by referees and others” and has hired a former consultant to help coordinate wagering intelligence and game screening. Slocum Decl. Exhibit 6 (Pedowitz Report, p. 113 ¶ (d) [Plaintiffs’ 00003478]).

30. There has been one case of game fixing in Major League Baseball in 1919 (which involved illegal gambling), one case of attempted game fixing in the National Football League in 1946 (which also involved illegal gambling), no cases of game fixing in the history of the National Basketball Association, and no cases of game fixing in the history of the National Hockey League. Slocum Decl. Exhibit 1 (Willig Report, ¶¶ 41-53); *id.* Exhibit 16 (NFL 30(b)(6) Dep. 70:12-24 (“We believe there’s been no match-fixing with regard to NFL games in the United States or anywhere else.”)); *id.* Exhibit 3 (Goodell Dep. 24:4-26:3 (same)); *id.* [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]; *id.* Exhibit 6 (Pedowitz Report, p. ES 3 [Plaintiffs' 0003360] (no evidence that Donaghy improperly influenced games)); *id.* [REDACTED]
[REDACTED]

31. With respect to the Football Bowl Subdivision (I-A) in college football (the primary revenue generating division), there have been only three incidents of match fixing during the period of legalized sports wagering in Nevada. Slocum Decl. Exhibit 1 (Willig Report, ¶ 55).

32. With respect to Division I college basketball (the primary revenue generating division), there have only been two episodes of widespread point shaving in NCAA history, both of which occurred over 50 years ago, and six incidents involving 2-4 players at individual schools. *Id.* (Willig Report, ¶¶ 56-58).

33. Among the college sports match fixing and point shaving incidents, all involved illegal gambling; [REDACTED]
[REDACTED] Slocum Decl. [REDACTED] 218:6-219:10 [REDACTED] *id.* Exhibit 7 (National Gambling Impact Study Commission Report, Statement of William A. Bible, Former Chairman of Nevada's Gaming Control Board [Plaintiffs' 00002494] ("Not one college sports scandal is the result of legal sports wagering.")).

34. The Leagues communicate with legal gambling establishments in Las Vegas for the purpose of preventing game fixing. Slocum Decl. Exhibit 8 (Emmert Dep. 96:16-21, 97:19-25 ("There's a line of communication that exists between some of our staff and some of

them.”); *id.* Exhibit 13 (NCAA 30(b)(6) Dep. 66:24-67:5; 145:14-147:17, [REDACTED]

[REDACTED]

[REDACTED]; *id.* [REDACTED] *id.* [REDACTED]

[REDACTED]

[REDACTED]

35. The NBA “obtain[s] information on a regular basis from individuals and entities involved in the gambling business who can provide the League with information about unusual movements in the betting lines, rumors about things such as injury reports or referee schedules or where the ‘smart money’ is being wagered. By flagging games or individuals for the League to investigate, these monitors may help the League detect gambling or misuse of confidential information.” The Pedowitz Report noted that “this system has been working properly, as certain games were brought to the League’s attention during the 2007-2008 season.” The NBA also uses line movement data for every game in an effort to detect signs of potential misconduct. Slocum Decl. Exhibit 6 (Pedowitz Report, p. 113 ¶¶ (c)-(d) [Plaintiffs’ 00003478]); *id.* [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

36. [REDACTED]

[REDACTED] Slocum Decl. [REDACTED]

[REDACTED]

37. Legal sports wagering operators in Nevada have assisted athletic leagues in their enforcement activities aimed at preventing game fixing and point shaving. Slocum Decl. Exhibit 8 (Emmert Dep. 56:17-20, 96:1-15 (“[We will try and garner as much information from the . . . Nevada gambling establishment as we can to understand the behavior, understand the dynamics, and try and discover anything that’s going on related to our games.”)); *id.* Exhibit 13 (NCAA 30(b)(6) Dep. 213:16-19 (gaming establishment personnel attended meetings on preventing game fixing)); *id.* [REDACTED]; *id.* Exhibit 6 (Pedowitz Report, p. 113 ¶¶ (c)-(d) [Plaintiffs’ 00003478] (“We note that this system has been working properly, as certain games were brought to the League’s attention during the 2007-2008 season.”)); *see also* Slocum Decl. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

39. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

40. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

41. [REDACTED]

[REDACTED] Slocum Decl. [REDACTED]

[REDACTED]

42. [REDACTED]

[REDACTED] Slocum Decl. [REDACTED]

43. [REDACTED] Slocum Decl. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

46. Beginning in 2007 and continuing to the present, the NFL has hosted a game each year in London, where sports wagering is legal and bets can be placed on the NFL's game just around the corner from Wembley Stadium. Slocum Decl. Exhibit 16 (NFL 30(b)(6) Dep. 63:3-11 ("I know for a fact that sports gambling in England is legal and Wembley Stadium has a ticket booth to take wagers at the stadium.")).

47. [REDACTED]

48. [REDACTED]

49. [REDACTED]

[REDACTED] Slocum Decl. [REDACTED]

[REDACTED]; *id.* [REDACTED]

50. In 2009, the NCAA amended its "Championship Policy," which previously prohibited NCAA championships in states with legalized sports wagering, to allow championships

in states “that may offer parlay betting, lottery tickets, or sports pools/pull tabs.” Slocum Decl. Exhibit 43 (NCAA Championships Policy [Plaintiffs’ 00001841]).

51. From 2011 to the present, the NCAA has permitted various Division I conferences, including the Pac-12, Mountain West Conference, Western Athletic Conference, and West Coast Conference, to hold basketball conference championships in Las Vegas. Slocum Decl. Exhibit 13 (NCAA 30(b)(6) Dep. 113:13-23, 114:6-20).

52. The NCAA has not experienced any sports gambling-related problems related to NCAA Division I basketball conference championships in Las Vegas. *Id.* (NCAA 30(b)(6) Dep. 114:21-115:8).

53. The NBA allows its players to engage in casino gambling and betting on non-NBA sports in places where it is legal. Slocum Decl. Exhibit 34 (NBA Anti-Gambling Pamphlet “Three Point Play” [Plaintiffs’ 00001838-39]); *id.* [REDACTED]

[REDACTED]

54. The NHL does not prohibit its players from gambling on other sports. Slocum Decl. Exhibit 44 (Player’s Contract and Standard Club Rules [Plaintiffs’ 00001884]); *id.* [REDACTED]

[REDACTED]

55. [REDACTED]

[REDACTED]

[REDACTED] Slocum Decl. [REDACTED]

[REDACTED]

[REDACTED].

56. The NBA allows teams to engage in advertising arrangements with legal gaming establishments that offer sports wagering and participate in promotional events with casinos that

have legal sportsbooks. Slocum Decl. [REDACTED]

[REDACTED]; *id.* [REDACTED].

57. The NHL has “liberalized” its gambling policies. Slocum Decl. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

58. The NFL allows gambling operators without sportsbooks to sponsor NFL clubs under certain conditions. Slocum Decl. Exhibit 16 (NFL 30(b)(6) Dep. 110:12-111:2 (“there is permission granted to our clubs to have sponsorship by either lotteries or certain casinos as long as they don’t have a sportsbook”)).

59. [REDACTED]

[REDACTED]

60. [REDACTED]

[REDACTED]

61. [REDACTED]

New Jersey’s Sports Wagering Law

62. In 2011, following voters' approval of an amendment to the New Jersey Constitution, the New Jersey Legislature legalized sports wagering in New Jersey casinos and racetracks and provided for a comprehensive system of regulation of sports wagering. *See* N.J.S.A. § 5:12A-1 *et seq.* ("the Sports Wagering Law").

63. Under the Sports Wagering Law, a casino or racetrack may offer sports wagering only if it obtains a license from the State specifically authorizing such wagering. *See id.* § 5:12A-2.

64. New Jersey has subsequently promulgated regulations establishing a regulatory framework for a legalized wagering market in New Jersey. *See* 44 N.J.R. 2374(a).

65. These regulations authorize examination of accounts and records by state officials, *id.* § 13:69N-3.1(d); mandate production of reports on sports wagering activities, *id.* § 13:69N-3.1(a); prohibit placing a bet on behalf of another person, *id.* § 13:69N-2.1; and prohibit wagering by individuals under 21 years old, *id.* § 13:69N-2.2(f).

66. Casinos or racetracks offering sports wagering in New Jersey are required to "file with the Division [of Gaming Enforcement] internal controls for all aspects of sports wagering operations," and "shall not commence sports pool wagering until internal controls have been approved by the Division." *Id.* § 13:69N-1.11.

67. The internal controls at New Jersey casinos and racetracks must "detail the reconciliation of assets and documents contained in the wagering cashier's drawers" and "provide for the reporting of any overage or shortage." *Id.* § 13:69N-2.2(d).

68. New Jersey will not issue any sports wagering licenses before January 9, 2013. *See* Dkt. 49, Letter from Attorney General Jeffrey A. Chiesa to the Hon. Lois H. Goodman, U.S.M.J. (Oct. 15, 2012).

Plaintiffs' Lawsuit Challenging New Jersey's Law

69. On August 7, 2012, Plaintiffs filed their Complaint in this action, seeking a declaration that the Sports Wagering Law and accompanying regulations “violate PASPA.” Compl. ¶ 35.

70. Plaintiffs seek an injunction barring anyone from “implementing or enforcing” the law or the regulations and “from sponsoring, operating, advertising, promoting, licensing or authorizing” any sports-betting system. *Id.*

71. In their Complaint, Plaintiffs asserted the Sports Wagering Law would harm them in two ways: (1) by increasing the risk of match-fixing and thereby undermining the integrity of their games and (2) by “fostering suspicion that individual plays and final scores of games may have been influenced by factors other than honest athletic competition.” Compl. ¶ 6.

72. Through discovery, Plaintiffs are now asserting injury on the basis of three theories: (a) the Sports Wagering Law will increase the risk of match fixing; (b) the Sports Wagering Law will lead to an increase in public perception that game fixing is occurring; and (c) the increased prevalence of sports wagering will undermine the bonds of loyalty between fans and teams, by causing fans to root based on their own financial self-interest rather than a pure interest in team loyalty. *See, e.g.*, Slocum Decl. [REDACTED]

[REDACTED]; *id.* Exhibit 3 (Goodell Dep. 34:23-35:5 (Public confidence in the NFL is threatened because “the threat that gambling could occur in the NFL or fixing of games or that any outcome could be influenced by the outside could be very damaging to the NFL...”)); *id.* [REDACTED]

[REDACTED]

[REDACTED]

73. Plaintiffs also have claimed standing on the basis of a section of PASPA providing that “[a] civil action to enjoin a violation of section 3702 may be commenced in an appropriate district court of the United States by the Attorney General of the United States, or by a professional sports organization or amateur sports organization whose competitive game is alleged to be the basis of such violation.” 28 U.S.C. § 3703; *see* Compl. ¶ 18.

The Leagues Have Failed To Come Forward With Facts Demonstrating That They Immediately Will Suffer A Concrete Injury Fairly Traceable To The Sports Wagering Law

74. Plaintiffs’ allegations of harm are based on their subjective beliefs, opinions, views of “common sense,” and interpretation of history. Slocum Decl. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]; *id.* Exhibit 13 (NCAA 30(b)(6) Dep. 61:3-16 (NCAA has no surveys, analyses, or other empirical evidence: “I’m just relying on conversations and my job responsibilities.”)); [REDACTED]

[REDACTED]

[REDACTED]; *id.* Exhibit 3 (Goodell Dep. 36:6-17 (expressing

“strongly held view” that gambling is a “threat”)); *id.* Exhibit 16 (NFL 30(b)(6) Dep. 51:19-52:9 (NFL believes that an increased “threat” of game fixing will occur as a result of the Sports Wagering law because “it would directly increase the amount of gambling.”)).

75. Plaintiffs do not have any estimates of the amount of illegal sports wagering currently occurring in New Jersey. Slocum Decl. [REDACTED]
[REDACTED]
[REDACTED]; *id.* Exhibit 16 (NFL 30(b)(6) Dep. 55:6-10, 56:10-19 (NFL has no studies regarding amount of sports gambling on NFL in New Jersey or the United States)); *see also*

[REDACTED]
[REDACTED] *id.* [REDACTED]
[REDACTED]
[REDACTED]); *id.* [REDACTED]
[REDACTED]

76. Plaintiffs have no empirical evidence demonstrating that the Sports Wagering Law will increase the total number of people involved in sports wagering (both legal and illegal). Slocum Decl. Exhibit 8 (Emmert Dep. 68:4-21 (“[T]he burden of proof, to me, ought to be on those who are legalizing gambling, demonstrate that, in fact, this diminishes gambling activity, and I don’t think that’s something that can be done.”); *id.* at 18:22-19:24, 26:14-19 (NCAA has no studies and relies on experience and threat of increase)); Slocum Decl. Exhibit 13 (NCAA 30(b)(6) Dep. 36:21-37:6 (It is “common sense that if you provide additional opportunities, there’s going to be an increase in the number of people participating.”); *id.* at 42:19-43:1-24, 47:10-49:7, [REDACTED] 243:7-11 (NCAA relies on “common sense” extrapolations from student athlete studies none of which address the impact of New Jersey Sports

Wagering Law on amount of gambling on NCAA games)); Slocum Decl. Exhibit 16 (NFL 30(b)(6) Dep. 59:5-61:15, 66:25-68:4 (NFL relies on experience, common sense, and law enforcement testimony to support its belief that the Sports Wagering Law will increase the number of people involved in sports gambling; it has no economic analysis or other studies in support));

id. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

77. Plaintiffs have no estimates of the financial loss they contend will result from the Sports Wagering Law. Slocum Decl. Exhibit 16 (NFL 30(b)(6) Dep. 97:18-98:2, 98:16-99:5 (“We’re unable to quantify that other than our understanding and belief that it will negatively impact”)); *id.* Exhibit 13 (NCAA 30(b)(6) Dep. 84:7-85:14 (NCAA has no studies regarding any estimated financial loss; nor does the NCAA allege that New Jersey’s legalization of sports gambling would result in fewer viewers, lower attendance, or lower TV ratings)); *id.* [REDACTED]

[REDACTED]

[REDACTED]

78. Plaintiffs have no empirical evidence that viewership has been negatively impacted by legalized sports gambling in Las Vegas. Slocum Decl. Exhibit 16 (NFL 30(b)(6) Dep. 99:6-16 (no information on television ratings)); *id.* [REDACTED]

[REDACTED]

[REDACTED] *id.* Exhibit 13 (NCAA 30(b)(6) Dep. 84:7-85:14 (NCAA has no studies regarding any estimated financial loss; nor does the NCAA allege that New Jersey's legalization of sports gambling would result in fewer viewers, lower attendance, or lower television ratings)); *id.* Exhibit 3 (Goodell Dep. 43:2-10, 51:15-21 (Despite legalized sports gambling in Las Vegas, the NFL believes that its fans and the public have confidence in the integrity of NFL games)); *id.* [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

79. The Leagues have no empirical evidence that the Sports Wagering Law will undermine their anti-gambling education efforts. Slocum Decl. Exhibit 8 (Emmert Dep. 52:9-53:16 ("I'm making assumptions about, about human behavior that you may disagree with . . .")).

80. The Leagues have no plans to modify or change their anti-gambling rules should sports gambling be legalized in New Jersey. Slocum Decl. Exhibit 3 (Goodell Dep. 32:17-33:6

(currently has no plans to implement any additional procedures or rules should the Sports Wagering Law be implemented)); *id.* Exhibit 8 (Emmert Dep. 85:20-24 (same)); *id.* [REDACTED]

81. There is no empirical evidence demonstrating that the Sports Wagering Law will harm student athletes. Slocum Decl. Exhibit 8 (Emmert Dep. 23:6-17, 72:2-73:19 (relying on history, extrapolation of studies on student athletes, and common sense for basis of argument)); *id.* Exhibit 13 (NCAA 30(b)(6) Dep. 79:6-17 (“The more avenues and opportunities [for student athletes to participate in gambling], the more concerned we are about that having a negative impact on their welfare.”)).

1. The Leagues Have Presented No Evidence That Match Fixing Will Increase

82. There is no empirical evidence demonstrating that an increase in legal gambling would result in increased match fixing. Slocum Decl. [REDACTED]

[REDACTED]; Slocum Decl. Exhibit 13 (NCAA 30(b)(6) Dep. 61:3-16 (“So I’m just relying on conversations and my job responsibilities.”)); *id.* [REDACTED]

[REDACTED]; *see also* Slocum Decl. Exhibit 8 (Emmert Dep. 18:22-19:24, 26:14-19, 37:10-39:25, 67:1-11 (relying on common sense, experience, and idea that more gambling “enhances the threat”)); *id.* Exhibit 16 (NFL 30(b)(6) Dep. 24:17-25, 51:19-52:9, 59:5-61:15 (no economic analysis)); *id.* [REDACTED]

[REDACTED]

83. The NCAA has not been contacted by members of the public concerned about match-fixing for years. Slocum Decl. Exhibit 13 (NCAA 30(b)(6) Dep. 246:6-16).

84. An individual inclined to engage in match fixing would prefer an illegal betting operation because there is a far greater likelihood of avoiding detection by police and the Leagues. Slocum Decl. Exhibit 1 (Willig Report ¶ 68).

85. Legalizing sports gambling would be more likely to expose attempts to fix games. *Id.* (Willig Report ¶¶ 72-76, 103-108).

86. Legal bookmakers have an incentive to deter and detect match fixing in order to preserve the viability of their business, and have proven effective in helping root out corruption when it has occurred. *Id.* (Willig Report ¶¶ 104-108).

87. Someone interested in engaging in match fixing, but not willing to bet illegally, would be able to bet legally in Nevada. *Id.* (Willig Report ¶ 69).

88. [REDACTED]

[REDACTED]

[REDACTED]

89. [REDACTED]

[REDACTED]

90. The NCAA does not know whether match fixing is more or less likely in a legal and regulated or an illegal and unregulated market. Slocum Decl. Exhibit 8 (Emmert Dep. 62:4-63:9).

91. After states began re-adopting legal lotteries starting in 1964, illegal lotteries – “numbers games” – run by organized crime largely disappeared. Slocum Decl. Exhibit 1 (Willig Report ¶¶ 27-28).

92. Over the past sixty years, the increase in legal wagering outlets for horseracing has led to a reduction in illegal wagering on horseracing. *Id.* (Willig Report ¶¶ 29-31).

93. NCAA President admitted that an opinion not based on empirical data or research is no better than anyone else’s opinion. Slocum Decl. Exhibit 8 (Emmert Dep. 93:20-94:12 (refusing to credit opinion of former chairman of Nevada’s Gaming Control Board because “this isn’t based on any empirical study that I’m aware of. I don’t think he’s conducted that research, and I have no reason to believe that his opinion is better or worse than anybody else’s.”)).

3. The Sports Wagering Law Will Not Inflict Reputational Injury On The Leagues

94. There is no empirical evidence to suggest that legalizing sports gambling in New Jersey would negatively change perceptions of the legitimacy of sporting events. Slocum Decl. Exhibit 3 (Goodell Dep. 34:2-35:5; 40:18-41:4 (NFL has no studies; instead basis for belief is “very strongly held view . . . that the threat that gambling could occur . . . could be very damaging”); *id.* at 41:5-42:16 (common sense and concern of threat supports belief that legalized sports gambling increases suspicion and cynicism toward every on-the-field event); *id.* at 14:25-15:8, 49:12-24 (games in countries where sports gambling is legal do not harm perception of NFL integrity because “people understand that we have very strong policies and that we protect outside influences from our game”)); Slocum Decl. Exhibit 16 (NFL 30(b)(6) Dep. 80:21-81:7 (NFL has no studies demonstrating NFL fans’ public perception based on legalized gambling in Las Vegas); Slocum Decl. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *id.* Exhibit 8

(Emmert Dep. 16:17-17:16, 31:20-32:5, 34:3-19, 38:15-19, 72:2-17 (NCAA has no studies and instead relies on common sense and common parlance to support argument that increased legal gambling would lead to more public suspicion)); *id.* Exhibit 13 (NCAA 30(b)(6) Dep. 71:13-22 (no NCAA studies regarding public perception of match fixing or impact on that perception of New Jersey law)); *id.* [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

95. [REDACTED]

[REDACTED] Slocum
Decl. Exhibit 16 (NFL 30(b)(6) Dep. 76:13-77:3 (“[I]t is our present position that there is not a belief among our fans that our games are fixed. Our fans believe that what they’re watching on

the field is honest competition. That is the appeal of our sport.”)); *id.* [REDACTED]

[REDACTED]

[REDACTED]

96.

[REDACTED]

[REDACTED]

97.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

98.

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

100. [REDACTED]

[REDACTED]

101. [REDACTED]

[REDACTED]

102. [REDACTED]

[REDACTED]

4. The Sports Wagering Law Will Not Damage The Relationship Between Fans And Teams

103. There is no empirical evidence demonstrating that the Sports Wagering Law will erode fan loyalties to teams or players. Slocum Decl. [REDACTED]

[REDACTED]

[REDACTED] Slocum Decl. [REDACTED]

[REDACTED]

[REDACTED]; *id.* Exhibit 3 (Goodell Dep 53:17-54:4 (“common sense” is basis for allegation of decreased fan loyalty); *id.* at 54:20-55:4 (“We don’t do studies

on common sense. We make that analysis. We think we have enough experience that we understand this.”); *id.* at 56:8-21 (NFL cannot answer whether NFL fans who also bet on NFL games have an allegiance to a team)); Slocum Decl. Exhibit 16 (NFL 30(b)(6) Dep. 84:5-10, 85:16-86:2, 186:18-21 (NFL cannot estimate how many fans currently watch NFL games due to financial rather than rooting interest but it “guess[es] some” sports gamblers may watch the games they bet on)); Slocum Decl. Exhibit 8 (Emmert Dep 46:4-47:18, 79:12-80:23 (NCAA has no studies; instead, basis for NCAA’s allegation of decreased fan loyalty is “view of human nature”)); *id.* Exhibit 13 (NCAA 30(b)(6) Dep. 83:4-13 (The NCAA has no studies, surveys, or analyses comparing the number of people who have a rooting interest because of team loyalty to those who have a rooting interest because of sports wagering)); *id.* [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]; Slocum Decl. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Slocum Decl. Ex-

hibit 19 [REDACTED]

[REDACTED]

104. The increased availability of legalized sports gambling may *increase* fandom. Slocum Decl. Exhibit 1 (Willig Report, ¶¶ 82-88 (growth of fantasy sports leagues in the U.S. provides evidence that legalized wagering in New Jersey could promote fan interest in the professional leagues); *id.*, ¶ 95 (Fan interest in the NCAA's post-season basketball championship tournament – now commonly known as “March Madness” – has been enhanced by the growth of tournament pools (or “brackets”) by drawing fans into the tournament that would otherwise have little interest and enhancing the interest of basketball fans)); *see also* Slocum Decl. Exhibit 8 (Emmert Dep. 43:23-25, 47:5-14, 79:12-23 (disclaiming existence of any study that could prove argument that legalized sports gambling negatively affects fan loyalty and relying on opinion of human nature)); *id.* Exhibit 3 (Goodell Dep. 53:19-54:4 (relying on common sense)); *id.* [REDACTED]

[REDACTED]

[REDACTED]

105. The NFL Network broadcasts fantasy sports analysis that, among other things, labels football players as “Trash or Treasure,” which NFL believes is consistent with the essence of sports debate. Slocum Decl. Exhibit 16 (NFL 30(b)(6) Dep. 254:19-256:24).

106. There is no empirical evidence suggesting that the New Jersey Sports Wagering Law will lessen the amateur nature of NCAA athletics. Slocum Decl. Exhibit 8 (Emmert Dep. 78:1-79:11 (no empirical studies on irreparable harm potentially caused by New Jersey Sports Wagering Law)).

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Respectfully submitted,

By:

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